

James A. Stenger  
202.508.4308 Direct Dial  
202.654.1805 Direct Fax  
jstenger@thelenreid.com

701 Pennsylvania Avenue, N.W., Suite 800  
Washington, DC 20004  
Tel. 202.508.4000  
Fax 202.508.4321  
www.thelenreid.com

March 11, 2005

Marlene H. Dortch, Secretary  
Federal Communications Commission  
c/o Natek, Inc.  
236 Massachusetts Avenue, N.E., Suite 110  
Washington, DC 20002

**RECEIVED**

**MAR 11 2005**

Federal Communications Commission  
Office of Secretary

**Re: CC Docket No. 02-6  
Waiver Request  
Wabash Valley Education Center  
Entity No. 130742  
Form 471, Application No. 485945**

Dear Ms. Dortch:

Wabash Valley Education Center ("WVEC") (Entity No. 130742), through counsel and pursuant to Sections 1.3 and 54.507(c) of the Commission's Rules, respectfully requests a *de minimus* waiver of the February 18, 2004 Form 471 filing window due to the fact that its Form 471, Application No. 485945, was filed at 1:23 AM on February 19. WVEC has received notice from SLD that SLD is treating the WVEC application as being filed out of window.<sup>1</sup> In addition, SLD has advised and the SLD website states that WVEC must request a waiver from the Commission of the filing window rule in Section 54.507(c).<sup>2</sup> Accordingly, WVEC is filing this waiver request directly with the Commission.

### **Factual Background**

WVEC is located in West Lafayette, Indiana and serves K-12 Schools in 14 Counties of North Central Indiana. The Form 471 includes funding requests for 91 schools that WVEC represents. Because this is the first time that WVEC has participated in the SLD funding process for Internet access and given the complexity of the SLD program rules, it took WVEC several months to evaluate and determine to apply to participate in the program. WVEC ultimately

<sup>1</sup> See Exhibit 1 hereto.

<sup>2</sup> The SLD website states, "For example, if you missed the filing deadline for Form 471 because of extenuating circumstances, the SLD cannot waive the deadline but you can ask the FCC to waive the rules in your case by filing a waiver request."

No. of Copies rec'd 013  
List ABCDE

determined to attempt to obtain funding for 91 schools and filed a Form 470 for these 91 schools on January 20, 2005. As the Commission is aware, Form 471 could not be filed until 28 days after the filing of the Form 470.

After collecting the data necessary to complete Form 471, WVEC began inputting the Form 471 data into the electronic filing system at approximately 4 PM on February 18, 2005. WVEC worked diligently to complete the application by the midnight deadline. WVEC had input the data for most of the 91 schools by midnight but WVEC was unable to complete the data entry for all 91 schools by midnight. At that point, WVEC could have terminated data input and filed a Form 471 that did not include all 91 of the schools that desired funding and that WVEC had included on its Form 470. WVEC determined that it would proceed to complete Form 471 data entry for all 91 schools, even if that meant filing Form 471 a few minutes after the close of the window. Data entry for the remaining schools was completed and the Form was submitted at 1:23 AM, 83 minutes after the midnight deadline.

WVEC reasonably expected that its Form 471 application would be accepted and processed as an in-window filing because WVEC began data input at 4 PM, *i.e.*, 8 hours before the midnight deadline. FCC Form 471, Page 1, at the top of the page, prominently states:

“Estimated Average Burden Hours Per Response: 4 hours.”

This same statement is repeated at the top of the first page of the Instructions to Form 471 and again on page 7 of the Instructions.<sup>3</sup> Because WVEC allowed 8 hours, from 4 PM to midnight, to complete and file the form, WVEC reasonably expected to have more than adequate time to complete the filing of Form 471 by midnight. In fact, Form 471 states that the 4 hours would include gathering the necessary information as well as completing the form.<sup>4</sup>

WVEC previously had participated in the funding program for POTS lines. WVEC also acted with reasonable diligence in view of its past experience in filing POTS applications. WVEC was able to input POTS applications in approximately two hours. Based on that experience, WVEC believed it had more than adequate time to input the Form 471. However, it turned out that additional information is required for Internet access support which resulted in the instant application unexpectedly taking more than 9 hours to input.

### **Grounds for Waiver Request**

A waiver under Section 1.3 is appropriate in this case. The Commission has held that a waiver may be granted where the purpose of a rule would be better served by granting the waiver

---

<sup>3</sup> FCC Form 471, page 1; FCC Form 471, Instructions, pages 1 and 7.

<sup>4</sup> Form 471, page 7, states, “Public reporting burden for this collection of information is estimated to average 4 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, completing, and reviewing the collection of information.”

than by strict enforcement of the rule.<sup>5</sup> The purpose of the filing window rule<sup>6</sup> is to equitably allocate the limited resources of the SLD among competing schools and libraries by treating all applications filed during the window as having been filed on the same day.<sup>7</sup>

WVEC, a first time filer for Internet access support, logged on to the system at approximately 4 PM on February 18, worked on the application for 8 hours from 4 PM until 12 PM, had entered the preponderance of the information into the system by 12 PM, but required another 83 minutes until 1:23 AM to complete and submit the Form 471. WVEC acted with reasonable diligence based on its past experience with POTS applications and given that Form 471 appears to indicate that it can be completed in 4 hours. Under these limited circumstances, as a matter of equity and fairness, a *de minimus* waiver of 83 minutes should be granted and the WVEC application should be accepted as having been filed in window.

WVEC, as a first time filer for Internet access support, requests leeway in this first instance that it would not expect to be accorded in future filings. This is especially true given the good faith decision of WVEC not to terminate data input at midnight and make what would have been a timely filing but for less than all 91 of the schools it serves. Having now had this first experience with filing the Internet support application and realizing that it requires considerably more time than the POTS support application, WVEC will institute procedures to ensure timely filing of all future SLD applications. Because WVEC was learning about the Internet access program, WVEC did not file its Form 470 until January 20, 2005, with the result that after waiting 28 days WVEC found itself facing the Form 471 filing deadline on the last day. In future years, WVEC can file Form 470 earlier and then have more time to file Form 471.

In adopting the filing window procedure, the Commission stated that it continues to believe that a first-come, first-serve filing procedure is the appropriate way to allocate limited funds and that the filing window is intended to support, not replace, the first-come, first-serve procedure.<sup>8</sup> Under the circumstances presented here, no competing applicant should claim

---

<sup>5</sup> E.g., *Request for Waiver by Lettie W. Jensen Library Amherst, Wisconsin*, DA 01-2401, 16 FCC Rcd 18526, 2001 FCC LEXIS 5583 (October 16, 2001); *Request for Waiver by Council Bluffs Community Schools (Council Bluffs, Iowa)*, DA 00-1909, 15 FCC Rcd 18836 (August 22, 2000). See also, *Request for Waiver by Woodburn School District, Woodburn, Oregon*, DA 03-3054, 18 FCC Rcd 20089, DA 03-3054 (October 6, 2003); *Requests for Waiver by Eastern Lebanon County School District, Myerstown, Pennsylvania, Newport News Public Schools, Newport News, Virginia*, DA 03-844, 18 FCC Rcd 5466 (March 24, 2003); *Request for Review of the Decision of the Universal Service Administrator by Franklin Public School District, Franklin, Wisconsin*, DA 01-2576, 16 FCC Rcd 19466, 2001 FCC LEXIS 5985 (November 05, 2001).

<sup>6</sup> 47 C.F.R. §54.507(c) states, in pertinent part, "The Administrator shall implement an initial filing period that treats all schools and libraries filing within that period as if their applications were simultaneously received. The initial filing period shall begin on the date that the Administrator begins to receive applications for support, and shall conclude on a date to be determined by the Administrator."

<sup>7</sup> *Federal-State Joint Board on Universal Service, Third Report and Order*, CC Docket 96-45, 12 FCC Rcd 22485, 9 CR 1158, 62 FR 56118, 1997 FCC LEXIS 5608 FCC 97-380 (Released: October 14, 1997), at para. 2. "Adopting a window filing period that begins when the administrative corporations begin to receive applications for support will also promote equity between applicants using existing contracts and applicants complying with the Commission's competitive bidding requirement."

<sup>8</sup> *Id.* at para. 5. "We remain committed to the general principle that funds will be allocated to applicants on a first-come first-served basis."

prejudice by the grant of a waiver and the inclusion of WVEC among the first group of simultaneously filed applicants. The SLD and competing schools and libraries had fair notice that WVEC is seeking funding for 91 schools by virtue of the Form 470 that WVEC timely filed. WVEC was reasonably diligent in its attempts to follow up with a timely Form 471.

WVEC would be severely prejudiced by denial of a waiver, since WVEC likely would not receive any funds despite the fact that it diligently attempted to file on time and in fact substantially completed its filing before the window closed. This would be especially prejudicial, unfair and inequitable when WVEC chose not to terminate data input and file for less than all 91 schools, believing it would be granted leeway because it had been in putting data online for 8 hours, double the expected time prominently indicated on Form 471. Under the circumstances, the underlying purpose of the first-come, first serve filing procedure would best be served by treating WVEC as having filed in-window.

Grant of a waiver to WVEC in this case will not open a floodgate of late filings. The limited circumstance here is that WVEC was a first time filer for Internet access support, was logged onto the filing system for 8 hours prior to the close of the window, and completed its filing only 83 minutes late, indicating that the preponderance of the information had already been entered into the system before the window closed, *i.e.*, 8 hours worth of data entry prior to the close of the window with only 83 minutes of data entry after the close. In addition, WVEC had timely filed Form 470. Only an applicant in similar circumstances would be able to benefit from a grant of a *de minimus* waiver in this very limited case.

Accordingly, for the foregoing reasons, WVEC respectfully requests a waiver of Section 54.507 (c) to allow WVEC's Form 471 to be accepted as being filed within the window that closed on February 18, 2005.

Should additional information be necessary in connection with this matter, kindly communicate directly with the undersigned.

Respectfully submitted,

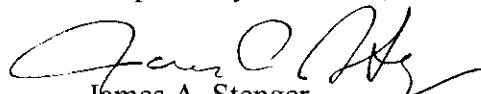
  
James A. Stenger

Exhibit 1

**Services Ordered and Certification Form 471  
Application Display**

---

**Applicant's Form Identifier:** wvec0506cons

**471 Application Number:** 485945

**Cert. Postmark Date:** 02/19/2005

**Out of Window Letter Date:**

**Funding Year:** 07/01/2005 - 06/30/2006

**Billed Entity Number:** 130742

**Form Status:** CERTIFIED - Out of Window

**RAL Date:**